

NOT DESIGNATED FOR PUBLICATION  
KAREN R. BAKER

DIVISION III

CA06-1148

RICKY L. EPPES

JUNE 6, 2007

APPELLANT

v.

ARKANSAS HOMECARE, INC. AND  
COMPANION PROPERTY & CASUALTY  
CO.

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[F307328]

APPELLEES

AFFIRMED

Appellant, Ricky Eppes, appeals from a decision by the Commission, affirming the ALJ and finding that appellant failed to prove by a preponderance of the evidence the existence of a causal relationship between his compensable injury on June 19, 2003, and his need for additional medical treatment. He asserts that the Commission's decision is not supported by substantial evidence. We disagree and affirm.

Eppes was employed by Arkansas Homecare, Inc., and he delivered medical supplies for homebound individuals. On June 19, 2003, Eppes was delivering an oxygen reservoir to a home and sustained an admittedly compensable injury. Eppes was unloading a large container of Helios reservoir (liquid oxygen) at a home with a patio. Because there were steps up to the patio, he used an aluminum ramp and dolly to assist him in getting the Helios up to the door of the home. When he was attempting to get the Helios down to unload it, the ramp buckled. He left the Helios sitting there while he went to the bottom of the ramp to get the buckle out of it. At that point, the Helios

container fell over, hitting him on the head. Although the container was empty, it weighed approximately twenty-five to fifty pounds.

Eppes was seen at the Ozark Health Medical Center by Dr. Reddy on June 30, 2003. It was noted in the medical report that Eppes had been struck on the head by a falling object. X-rays were taken, and they showed a normal cervical spine. Dr. Reddy referred Eppes to Dr. Waller at the Ozark Mountain Orthopaedic Clinic. He was seen on July 11, 2003. Dr. Waller noted that Eppes was four-weeks post injury. Eppes returned to Dr. Waller on August 1, 2003, and a neurological examination showed that Eppes was normal in the upper extremities. Dr. Waller recommended therapy for three more weeks and recommended that Eppes wear a cervical collar. Eppes's next visit to Dr. Waller was on August 22, 2003, and Dr. Waller reported that Eppes was still experiencing pain, but continuing to improve. Eppes's final visit to Dr. Waller was on September 12, 2003, and Dr. Waller reported that Eppes was feeling much better. Eppes was given permission to return to work.

Eppes subsequently moved to Alabama. He testified that he felt that he "wasn't getting any better." He called the insurance company to request more medical treatment, but his request was denied. On July 29, 2004, he sought treatment from Dr. Blackmon for pain in his neck that was radiating down the left upper extremity. Dr. Blackmon's notes state that Eppes's pain began in May 2004. Eppes testified that he did not recall when the pain began, but that he had no reason to disagree with Dr. Blackmon's notes as to when the pain began. Dr. Blackmon ordered an MRI that showed a disc bulge at C6-7 and spurring at C3-4 and C4-5. He was also seen by Dr. Kendrick with Neurosurgery Associates of Central Alabama, who indicated that it was his impression that Eppes had a herniation at C6-7 on the left side. Dr. Kendrick recommended a cervical fusion. Eppes told Dr. Kendrick that his left arm pain did not begin until May 2004.

Eppes testified that his condition did not improve over time. He felt that his condition remained the same, despite the physician's notes that he was improving. He also denied telling Dr. Waller that the physical therapy was helping him. Eppes testified that once he started to feel the pain in his arm and tingling in his fingers, he felt that he needed to seek further medical treatment. He did not seek treatment after he was released from Dr. Waller in September 2003 because of Dr. Waller's opinion that it would take up to a year for him to heal completely.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Liaromatis v. Baxter County Reg'l Hosp.*, 95 Ark. App. 296, \_\_\_ S.W.3d \_\_\_ (2006) (citing *Clark v. Peabody Testing Serv.*, 265 Ark. 489, 579 S.W.2d 360 (1979); *Crossett Sch. Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1995)). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; even if a preponderance of the evidence might indicate a contrary result, if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The Commission is required to weigh the evidence impartially without giving the benefit of the doubt to any party. *Keller v. L.A. Darling Fixtures*, 40 Ark. App. 94, 845 S.W.2d 15 (1992).

The Commission also has the duty of weighing the medical evidence as it does any other evidence. *Liaromatis*, 95 Ark. App. at \_\_\_, \_\_\_ S.W.3d at \_\_\_ (citing *Roberson v. Waste Mgm.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997)). The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury

verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). When the Commission denies benefits upon finding that the claimant failed to meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for relief. *Cooper v. Hiland Dairy*, 69 Ark. App. 200, 11 S.W.3d 5 (2000). In addition, the Commission cannot arbitrarily disregard any witness's testimony. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

Appellant asserts that the Commission erred in finding that appellant failed to prove by a preponderance of the evidence the existence of a causal relationship between his compensable injury on June 19, 2003, and his need for additional medical treatment. We disagree. As a general rule, an injured employee may recover compensation for a new injury, or an aggravation of his injury, where there is no independent cause to break the chain of causation between the new injury, or aggravation, and the original injury. *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). Whether there is a causal connection is a question of fact for the Commission. *Id.* Our workers' compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2005); *Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, --- S.W.3d ---- (2005). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Id.* It is the province of the Commission to weigh conflicting medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission. *Id.*

At the hearing before the ALJ, Eppes recounted the history of his original June 19, 2003 accident and compensable neck injury. He testified that he did not see continuing improvement in his condition; rather, his condition continued to deteriorate. Examining Eppes's testimony alone

would support his contention that his need for the additional treatment occurred as a result of his condition continuing to deteriorate, making the problems with his cervical spine a compensable consequence of his compensable neck injury. However, we defer to the Commission's determinations of credibility, and the Commission clearly did not find appellant's testimony to be credible. In so finding, the ALJ's opinion, which was adopted by the Commission, stated:

Because Claimant's testimony is not consistent with the contemporary medical records in a key aspect, his testimony is not reliable and therefore not credible. Claimant testified at the hearing that his condition never improved: "I don't feel like it ever got better." This is inconsistent with the physical therapist's September 11, 2003 observation that Claimant's "progress has varied." Significantly, it is much more inconsistent with Dr. Waller's August 22, 2003 report that Claimant "is continuing to improve. . . . [H]e feels that the therapy is helping immensely." Likewise, Claimant's testimony is inconsistent with Dr. Waller's September 12, 2003 report that Claimant "is stating that he is feeling much better" despite occasional weather—or activity-related pain.

Further, the 2003 medical records do not establish the Claimant's compensable injury bears some causal relation to his current need for treatment. Claimant's 2003 studies—admittedly, x-rays—did not reveal any problems in his cervical spine. Dr. Waller recorded "normal motor function to his upper extremities" on July 11, 2003; that "[n]eurologically he is normal in the upper extremities" on August 1, 2003; and that "[h]e has a normal neurologic in the upper extremities" on August 22, 2003. Through the date of Claimant's September 12, 2003 release, there are no complaints of pain or tingling in Claimant's left arm; this condition did not arise until May of 2004, and is not documented until July 29, 2004.

In light of the foregoing, it would be speculation to relate Claimant's left arm pain and documented bulging disc to his earlier compensable injury. Apart from recording Claimant's history, none of the medical records subsequent to May of 2004 establish a causal relationship between the compensable injury and his current need for medical treatment. And, as noted, Claimant's history is not reliable; contrary to his current statements, his 2003 medical records establish that his condition improved prior to his September 2003 release. Thus, Claimant has not sustained his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment.

It is well-settled that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and

translate into findings of fact only those portions of the testimony it deems worthy of belief. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). On this record, we cannot say that the Commission erred in finding that appellant failed to prove that additional medical treatment was reasonable and necessary for the June 19, 2003 compensable injury.

Affirmed.

GLOVER and MILLER, JJ., agree.